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2001 ROSS AVENUE
DALLAS, TX 752012980

EXAMINER

FERGUSON, MICHAEL P

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES R. ALBRITTON

Appeal 2010-012489
Application 09/074,496
Technology Center 3600

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and
KEN B. BARRETT, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 37 and 40, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The Appellant claims a breakaway guardrail post. Claim 37 is illustrative:

37. A breakaway guardrail post for highway crash control systems comprising:

an upper post member having a weak impact axis and a strong impact axis;

a lower post member disposed beneath and spaced apart from said upper post member;

a connecting joint member having a first end and a second end, said first end of said joint member connected at said first end by a first fastener to said upper post member and connected at said second end by an attachment to said lower post member, said first fastener having a first failure strength less than a second failure strength of said attachment;

said first fastener having a first connector having a first failure strength and a second connector having a second failure strength; and

said first failure strength of said first connector greater than said second failure strength of said second connector such that upon an impact force being applied along said weak impact axis, said second connector fails and said upper post member rotates about said first connector.

The Reference

Wilcox	4,183,695	Jan. 15, 1980
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The Rejection

Claims 37 and 40 stand rejected under 35 U.S.C. § 102(b) over Wilcox.

OPINION

We reverse the rejection.

Issue

Has the Appellant indicated reversible error in the Examiner's determination that the base (12) of Wilcox's collapsible barricade (10) is a post member?

Findings of Fact

Wilcox discloses a collapsible barricade (10) comprising a base (12) connected to a pair of legs (24, 26) by bracket plates (30, 32) welded to side members (18, 20) of the base (12) (col. 1, ll. 62-65, col. 2, l. 23; Fig. 1).

Analysis

"Anticipation requires that every limitation of the claim in issue be disclosed, either expressly or under principles of inherency, in a single prior art reference." *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1255-56 (Fed. Cir. 1989).

The Examiner argues that "Wilcox discloses a breakaway guardrail post 10" comprising an upper post member (legs 24, 26) and a lower post member (base 12) (Ans. 4). "[T]he recitation of 'post member'", the Examiner argues, "is not limited to only 'posts'. Rather, 'post member' is inclusive of any member that is a constituent part of a 'post'" (Ans. 7). The Examiner argues that "[t]he identified 'lower post member', i.e., base 12, of Wilcox is properly considered to constitute the lower post member as recited by claim 37 [and claim 40] because it is a constituent part of the 'post' and it is at the lower part of the overall 'post'." *See id.*

The Appellant argues that no person of ordinary skill would have considered the combination of Wilcox's pair of legs (24, 26) and base (12) to be a post (Reply Br. 3).

“[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification.” *In re Translogic Tech. Inc.*, 504 F.3d 1249, 1256 (Fed. Cir. 2007), quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000).

The Appellant’s Specification states that “breakaway support post 30 includes elongated body 32 defined in part by web 34 with flanges 36 and 38 attached thereto” (Spec. 16, ll. 7-9) and that “breakaway support post 30 includes soil plates 52 and 54 which are attached to the exterior of respective flanges 36 and 38 adjacent to the portion of the breakaway support post 30 which will be inserted into the soil” (Spec. 17, 22-25; Fig. 1). That description of the breakaway guardrail post is consistent with the relevant dictionary definitions of “post” provided by the Appellant, i.e., “a piece of timber or other solid substance (as metal) fixed or intended to be fixed firmly in an upright position esp. as a stay or support”¹ and “[a] long piece of wood or other material set upright into the ground to serve as a marker or support.”²

The Examiner has not provided evidence or reasoning which shows that the broadest reasonable interpretation of the Appellant’s claim term “post” consistent with the Specification encompasses a structure including as a part thereof Wilcox’s base (12). Even if Wilcox’s pair of legs (24, 26) reasonably can be considered to be posts, the base (12) appears to be a

¹ *Webster’s Third New International Dictionary* 1771 (Merriam-Webster 1981).

² *The American Heritage® College Dictionary* 1067 (Houghton Mifflin 2000).

support for the posts rather than being, as the Examiner argues, “at the lower part of the overall ‘post’” (Ans. 7).

Conclusion

The Appellant has indicated reversible error in the Examiner’s determination that the base (12) of Wilcox’s collapsible barricade (10) is a post member.

DECISION/ORDER

The rejection of claims 37 and 40 under 35 U.S.C. § 102(b) over Wilcox is reversed.

It is ordered that the Examiner’s decision is reversed.

REVERSED

sld

BAKER AND BOTTS
2001 ROSS AVENUE
DALLAS TX 75201-2980